PATENT
674542-2015

REMARKS

The March 22, 2006 Office Action required restriction from among:

I. Claims 1-22, drawn to an immunogen which comprises at least one antigenic determinant constituted by an amino acid sequence that includes at least one B-cell epitope and/or at least one CTL epitope and at least one second antigenic determinant constituted by an amino acid sequence that includes a T helper cell epitope (T_H epitope), classified in class 424, subclass 184.1, for example; and,

II. Claims 23-32, drawn to a method for immunizing an animal against an antigen of choice, comprising administering an effective amount of the immunogen according to claim 1 or an immunogenic composition for raising an immune response, classified in class 424, subclass 130.1, for example.

Applicants hereby elect, with traverse, the claims of Group II.

The MPEP lists two criteria for a proper restriction requirement. First, the invention must be independent or distinct. MPEP § 803. Second, searching the additional invention must constitute an undue burden on the examiner if restriction is not required. Id. The MPEP directs the examiner to search and examine an entire application "[i]f the search and examination of an entire application can be made without serious burden, ... even though it includes claims to distinct or independent inventions." Id.

The Office Action states that the Groups of claims are distinct because the claims are related as product and process of use, and the process of the claims of Group III can be used with any immunogenic compositions. Applicants respectfully submit that all of the claims are interrelated and are drawn to immunogens and methods of their use. Indeed, both Groups I and II are similarly classified in class 424. For this reason, it is counterintuitive and extremely prejudicial to the applicant to differentiate between the elected claims and those claims directed towards the immunogen itself. Accordingly, Applicants respectfully request that claims 1-22 be searched and examined along with the claims of Group II, such that in total, claims 1-32 are searched and examined together.

Furthermore, for a restriction requirement to be proper, it must satisfy both of the above elements. Accordingly, the present restriction requirement is improper and must be withdrawn

because the Office Action only alleges that the inventions are distinct, as described above. The Office Action provides no showing that search and examination of the claims would be an undue and serious burden. Accordingly, the search and examination of the claims of Groups I and II would not be unduly burdensome, and there is no required showing in the Office Action that such an addition of two claims would result in an undue burden. Therefore, the restriction requirement is improper because it does not satisfy both requirements for restriction and should be withdrawn.

In view of the remarks herein, enforcing the present restriction requirement would result in inefficiencies and unnecessary expenditures by the Applicants and the PTO, as well as extreme prejudice to Applicants (particularly in view of GATT, whereby a shortened patent term may result in any divisional applications filed). Restriction has not been shown to be proper, especially in view of the lack of assertions in the Office Action as to the requisite showing of serious burden, in contrast to the requirements of MPEP 803.04. Indeed, the search and examination of each Group would likely be co-extensive and, in any event, would involve such interrelated art that search and examination of the entire application can be made without undue burden on the Examiner. All of the preceding, therefore, mitigate against restriction and election species.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the restriction requirement or modification thereof.

CONCLUSION

Reconsideration and withdrawal of the restriction requirement and election of species, and an early and favorable examination on the merits is respectfully requested in view of the remarks herein.

Respectfully submitted,
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